

Full Committee Hearing
Senate Committee on Commerce, Science, and Transportation
Written Questions for the Record from Chairman John Thune to Daniel Elliott III

1. Mr. Elliot, the STB Reauthorization Act of 2015, a bipartisan bill that I have worked on with Ranking Member Nelson, and which passed out of this Committee in March, includes a provision that would allow Board members to speak to one another as well as increase the size of the Surface Transportation Board from three to five members, primarily to address inefficient quorum requirements. What are your thoughts on both of these provisions?

I support the goal of increasing communication among Board Members. I understand that appointees to other multi-member agencies with more than 3 members may engage in one-on-one discussions and remain in compliance with Government in the Sunshine Act. If confirmed, I stand ready to ensure that the Board takes advantage of any new procedures that increase the opportunity for more efficient communication.

2. Mr. Elliot, the Surface Transportation Board Reauthorization Act of 2015 also includes a provision addressing the current inability of the STB to initiate investigations on matters other than rate cases. How would expanding the investigative responsibility of the STB enhance your ability to carry out the mission of the STB? What past experience would you draw on to implement the potentially expanded investigative responsibility of the STB?

I believe that the investigatory authority provided in S.808 will give the Board an effective tool to respond quickly and nimbly to issues that arise. For example, during last year's rail service crisis, the Board relied on its general powers provisions in 49 U.S.C. 721 to request reporting from the railroads regarding service performance. The ability to rely on a more specific investigatory provision would give the Board greater flexibility to address significant issues in the industry.

3. Mr. Elliot, you commissioned a Price Waterhouse Coopers management study during your previous tenure as Chairman. What were you hoping to learn from the study? What did it show? Will you provide a copy of the study to the Committee?

I approved a contract solicitation in 2014 for a study of the Board's internal processing of rate cases and how we might improve from an organizational management perspective. While the Board staff is comprised of subject matter experts in fields related to economic regulation, the agency does not possess an in-house team/process expert. As cases get more complex and rate case teams necessarily grow in size and tasks, we need to look for ways to improve how the agency structures its internal process, which already includes multiple Board offices, dozens of agency employees and multiple levels of review. After completing a process pursuant to federal

acquisition requirements, the agency engaged Price Waterhouse Coopers to complete this process study.

I understand that the study is not yet complete. Should I be confirmed, I look forward to reviewing its recommendations and receiving input from my Board colleagues as well as senior management regarding its recommendations. If confirmed, I will provide a copy of the study to the Committee.

4. Mr. Elliot, you have stated that your top two goals as Chairman of the STB was to increase the transparency of the agency and create better harmony between shippers and railroads throughout the United States. What improvements were made under your leadership to increase the transparency of the STB and to create better harmony between shippers and railroads?

I pursued several initiatives at the Board that increased transparency and improved the communication between shippers and carriers. First, it was my practice to hold oral arguments and hearings in proceedings where the Board and our stakeholders would benefit from an open dialogue. During my tenure, the full Board held 28 hearings/arguments and the agency also held numerous public meetings conducted by Board staff throughout the country. Second, I worked to strengthen the Board's alternative dispute resolution program so that carriers and shippers could avail themselves of techniques like mediation, and I grew the Board's Rail Customer and Public Assistance Program (RCPA) by increasing its profile and adding experienced staff to the office. Indeed, in 2014, RCPA handled over 1,300 inquiries, approximately 160 of which were informal complaints between shippers and railroads. Many of these informal complaints were successfully resolved, obviating the need for a formal proceeding. Third, I traveled to visit the Board's stakeholders at their facilities and plants – a key component to understanding both the rail industry and the customers it serves.

5. Mr. Elliot, as Chairman, I understand that one of the areas you focused on was technology improvement. Can you speak to the need for improved technology at the STB as well as what initiatives you advanced in the past or would advance in the future?

The Board has taken a number of steps in the last several years to improve its information technology capabilities. However, the infrastructure that would support the systems for an improved agency website or more automated reporting tools is badly in need of updating. The challenge for an agency the size of the Board is to find sufficient resources to completely overhaul its infrastructure, without sacrificing mission-critical functions. In 2014, for example, the Board solicited bids to move to a cloud computing solution. The bid came in well above the Board's available funds for such a project. When I departed the agency in December 2014, Board staff was developing options for breaking the IT modernization project into smaller phases that the Board could accomplish over a number of years with smaller budget outlays. It is my expectation that work on that project has continued since my departure.

6. Mr. Elliot, I am regularly hearing from constituents about the length of time it takes the STB to finalize rules and have been given numerous examples of rules that have languished for years. What steps would you take to improve the Surface Transportation Board's rulemaking process?

The Board completed several important rulemaking proceedings in the last few years involving matters such as: mediation and arbitration; procedures for assessing demurrage charges; increased damage award caps for smaller rate cases; and increased disclosure of information whenever a rail line is sold or leased subject to a "paper barrier."

But the Board has not yet completed certain proceedings related to competition issues, including competitive access, revenue adequacy, and grain rates. These proceedings, which raise issues at the core of the Board's regulatory policy, have been a source of significant contention among agency stakeholders for many years. If confirmed, I intend to resolve all of these open rulemaking proceedings within a year. My goal will be to address these interrelated issues consistently in a way that reasonably balances the goals of competition for shippers, adequate revenues for rail carriers, and a safe and efficient rail network. The Board hearings scheduled for June and July, which I will attend regardless of whether the confirmation process is completed, will facilitate resolution of these matters.

7. Mr. Elliot, in your responses to the Committee Questionnaire, you mention that you are leading the Board's efforts to implement the Passenger Rail Investment and Improvement Act of 2008, a law designed to improve Amtrak's on-time performance. What steps have you taken in order to improve performance, and what steps would you take as Chairman to ensure this goal is accomplished?

The Board's PRIIA implementation has been a multi-pronged approach. First, the agency has set up a passenger task force that focuses on PRIIA issues, which includes staff from the Office of Public Assistance, Government Affairs and Compliance; the Office of Proceedings; and the Office of Economics. Second, in 2014, the agency entered into an agreement with DOT's Volpe Center for on-time performance data analysis. The Volpe arrangement will assist the Board in the development and analysis of large amounts of data that will be useful in passenger-freight rail oversight matters pursuant to the Board's responsibilities under PRIIA. Third, the Board sponsored mediation between Amtrak and those states with state-supported routes in an effort to resolve areas of concern.

Outside of these initiatives, the Board was active in ensuring that the railroads pushed to improve Amtrak's service during the service issues in 2013-2014. I met with the leadership of multiple railroads regarding Amtrak OTP issues and directed Board staff to monitor Amtrak issues during their regular conference calls with railroad operations personnel. I sought and received information from railroads regarding anticipated Amtrak performance issues in the

annual “Fall Peak” submissions. In addition, the Board is adjudicating several PRIIA-based complaints that have been filed by Amtrak against individual railroads.

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Written Questions for the Record from Senator Deb Fischer to Daniel Elliott III

1. During your confirmation hearing, you answered a question regarding differences in rates between northern West Virginia and southern West Virginia as follows:

“We are also looking at competition issues, which I started this year, including competitive access. So that is another thing, one of the top things, on my list to do as soon as, if I hopefully get confirmed.”

One could read a number of things into your answer, specifically that you have already made a decision on this proceeding. Would you please clarify whether or not you have already pre-determined the outcome of this proceeding and support competitive access?

My answer to Senator Manchin’s question was intended to convey that my one of my top priorities, should I be confirmed, will be to resolve the competitive access proceeding. I believe that our stakeholders are entitled to certainty on the direction that the Board will take with regard to competitive access, revenue adequacy and other significant issues that the Board is considering. The fact that the Board is examining these issues does not mean that there is any pre-determined outcome. Rather, in light of a changing rail industry, we must ensure that the policies we have today are as effective as they can be.

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Written Questions for the Record from Senator Jerry Moran to Daniel Elliott III

1. Mr. Elliott, my understanding is there is a current proceeding before the STB, Ex Parte 724, to require Class I railroads to submit weekly service metrics reports, but only for certain commodities, such as grain and ethanol. Why is fertilizer not included as a reported commodity?

While fertilizer distribution may be primarily an issue during the Spring and Fall, the peak seasons for its use, logistically fertilizer must still move year round to ensure its timely availability during periods of peak usage. For environmental and practical purposes, the window for fertilizer application is often narrow, requiring all pieces to be in place for the final distributions to farms. This issue is examined in far greater detail in a January 2015 report by the U.S. Department of Agriculture, entitled “Rail Service Challenges in the Upper Midwest,” which states:

“Although current rail metrics are showing improvement, concerns of timely fertilizer deliveries can arise in advance of 2015 spring planting. Roughly 60 percent of fertilizer is applied in the spring, and 40 percent is applied in the fall. Even though the demand for fertilizer is seasonal, it must be moved year round in order to work within the capacity constraints of the transportation network”(page 25).

I would be happy to provide the full text of this report if necessary. Thank you in advance for your attention to this matter, any insight you have would be greatly appreciated.

As your question indicates, the Board has proposed a rule that would require the railroads, on a permanent basis, to report service performance data on a variety of commodities, including grain, coal, automotive, crude oil and ethanol. While the initial list of specific commodities did not include fertilizer, The Fertilizer Institute has submitted comments requesting that the Board add fertilizer to the reporting requirements. Because the rulemaking proceeding is currently pending before the Board and, should I be confirmed, I would be voting on this very issue, I must refrain from directly commenting on that request at this time. As a general matter, however, I certainly agree that the timely distribution of fertilizer is absolutely critical to the Nation’s agricultural sector. For that reason, fertilizer movements were the subject of the Board’s very first reporting order in the recent service crisis.